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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

N.L.A, a minor by and) Case No. CV 15-02431 DDP (GJSx)
through her guardian,)
MARICRUZ HERRERA,)
individually and as heir at)
law successor in interest to)
NOEL AGUILAR, deceased; and)
ELVIA AGUILARL,)
individually,)
Plaintiff,)
v.)
COUNTY OF LOS ANGELES;) [Dkt. 45]
ALBERT MURAD, an individual;)
JOSE RUIZ, an individual,)
Defendants.)
_____)

**ORDER DENYING DEFENDANTS' MOTION
TO DISQUALIFY**

Presently before the court is Defendants' Motion to Disqualify
Opposing Counsel. Having considered the submissions of the
parties, the court denies the motion and adopts the following
Order.

I. Background

Ariana Gebauer was an associate at the Law Offices of John
Burton and represented Plaintiff C.M.G., a minor, in the present

1 case. (Declaration of Ariana Gebauer, ¶ 1.) Between May 2014 and
2 November 2014, Ms. Gebauer was employed by Collins Collins Muir +
3 Stewart LLP (CCMS), a firm that represented Defendant County of Los
4 Angeles ("the County"). (Id. at ¶ 2.) CCMS employed a hierarchal
5 firm structure in which a partner, a senior associate, and a junior
6 associate were usually assigned to a case. (Id. at ¶ 5.) Ms.
7 Gebauer was typically assigned to cases as the junior associate.
8 (Id.) During the time of her employment at CCMS, CCMS represented
9 the County in N.G. v. County of Los Angeles, No. 13-cv-008312-SVW
10 ("N.G. v. County"), a 42 U.S.C. § 1983 claim alleging unreasonable
11 use of force by the County and two individual Los Angeles County
12 Sheriff's Department ("LASD") deputies. (Declaration of Catherine
13 Mathers, ¶ 4.) Ms. Gebauer maintains that she was not assigned to
14 the case officially and never met with county representatives
15 outside of their capacity as witnesses. (Id. at ¶¶ 6,7.)
16 Furthermore, she maintains that she did no significant work on any
17 LASD civil shooting cases. (Id. at ¶ 8.)

18 Ms. Gebauer's supervisor at CCMS, Ms. Mathers, the lead trial
19 attorney on the N.G. v. County case, alleges that Ms. Gebauer
20 worked closely with her on the case and drafted page line summaries
21 of the two individual defendants' testimonies. (Decl. Mathers, ¶
22 5.) Ms. Mathers claims that she told Ms. Gebauer confidential
23 information regarding the County's evaluation and defense of § 1983
24 claims while Ms. Gebauer was assisting her. (Id. at ¶ 6.) While
25 working with Ms. Mathers, Ms. Gebauer also had access to the entire
26 N.G. v. County case file. (Declaration of Thomas Guterres, ¶ 7.)
27 While at CCMS, Ms. Gebauer also worked on three civil service
28

1 matters filed by deputies against the County. (Decl. Gebauer, ¶ 8;
2 Decl. Mathers, ¶ 7.)

3 Upon leaving CCMS in November 2014, Ms. Gebauer joined Kessel
4 & Associates and worked there for approximately three months.
5 (Decl. Gebauer, ¶ 14.) While at Kessel, Ms. Gebauer worked on two
6 cases in which the firm defended the County, neither of which
7 involved an excessive force allegation. (Id.)

8 In May 2015, Ms. Gebauer joined the Law Offices of John
9 Burton. (Id. at ¶ 15.) Before hiring Ms. Gebauer, Mr. Burton
10 vetted her for any conflicts of interest. (Declaration of John
11 Burton, ¶ 3.) Once Mr. Burton determined no conflict existed, Ms.
12 Gebauer began working on the cases in his office, including this
13 case. (Id. at ¶ 5.) On January 6, 2016, Mr. Burton emailed all
14 attorneys of record in this case, informing them that Ms. Gebauer
15 would be handling discovery. (Id. at ¶ 8, Ex. A.) On January 26,
16 2016, during a teleconference with defense counsel, Ms. Gebauer
17 stated that she "knew the type and nature of confidential LASD
18 documents referenced within the Stipulation for Protective Order's
19 paragraph five, 'Good Cause Statement and Confidential Materials,'
20 because of her prior representation of Defendant County."
21 (Declaration Carmen Aguado, ¶ 3.)

22 Following this disclosure, defense counsel, Carmen Aguado,
23 began researching Ms. Gebauer's prior employment. (Id. at ¶ 4.)
24 On March 25, 2016, Aguado sent Ms. Gebauer and Mr. Burton a meet
25 and confer letter outlining the grounds for this motion.
26 (Id. at ¶ 8.) During this time, and up until March 28, 2016, Ms.
27 Gebauer and Mr. Burton continued to work on this case, including
28 responding to seventy-six requests for production of documents, one

1 hundred and three requests for admission, and twenty-five
2 interrogatories. (Decl. Burton, ¶ 15.)

3 In July 2016, Ms. Gebauer accepted employment at the Riverside
4 County Public Defender's Office and has withdrawn as an attorney of
5 record on this case. (Supplemental Decl. Ariana Gebauer, ¶¶ 2,3.)
6 Defendants now move to disqualify Ms. Gebauer's former employer,
7 the Law offices of John Burton, pursuant to California Rule of
8 Professional Conduct, 3-310 (E).

9 **II. LEGAL STANDARD**

10 Motions to disqualify counsel are governed by state law. W.
11 Sugar Coop. v. Archer-Daniels-Midland Co., 98 F. Supp. 3d 1074,
12 1080 (C.D. Cal. 2015). A trial court's power "to disqualify an
13 attorney derives from the power inherent in every court to control
14 in furtherance of justice, the conduct of its ministerial
15 officers." People ex rel. Dept. of Corporations v. Speedee Oil
16 Change Sys., Inc., 20 Cal. 4th 1135, 1145 (1999). Under California
17 Rule of Professional Conduct 3-310 (E),

18 "A member shall not, without the informed written consent
19 of the client or former client, accept employment adverse
20 to the client or former client where, by reason of the
21 representation of the client or former client, the member
22 has obtained confidential information material to the
23 employment."

24 Courts have recognized that conflicts arising from successive
25 representation of clients with potentially adverse interests
26 jeopardize the former client's confidentiality. See Flatt v.
27 Superior Court, 9 Cal. 4th 275, 282 (1995). In reviewing a motion
28 to disqualify, a court should consider "a client's right to chosen
counsel, an attorney's interest in representing a client, the
financial burden on a client to replace disqualified counsel, and

1 the possibility that tactical abuse underlies the disqualification
2 motion." SpeedDee Oil, 20 Cal. 4th at 1145; W. Sugar Coop., 98 F.
3 Supp. 3d at 1080. Where a former client seeks to disqualify an
4 attorney who successively represents a new client in a matter that
5 is adverse to the former client, a "substantial relationship" must
6 exist between the subject of the current litigation and prior
7 litigation. Flatt, 9 Cal. 4th at 283; City and County of San
8 Francisco v. Cobra Solutions, Inc., 38 Cal. 4th 839, 847 (2006).
9 The substantial relationship test balances the new client's right
10 to counsel of choice and the former client's right to
11 confidentiality. Flatt, 9 Cal. 4th at 283.

12 To determine whether a substantial relationship exists, the
13 court first determines whether there was a direct professional
14 relationship between the former client and the attorney. Cobra
15 Solutions, 38 Cal. 4th at 847. "A substantial relationship exists
16 where 'the attorney had a direct professional relationship with the
17 former client in which the attorney personally provided legal
18 advice and services on a legal issue that is closely related to the
19 legal issue in the present representation.'" Khani v. Ford Motor
20 Company, 215 Cal. App. 4th 916, 920 (2013) (citing Jessen v.
21 Hartford Casualty Ins. Co. 111 Cal. App. 4th 698, 710-711 (2003)).
22 Where there is no direct professional relationship, "then the court
23 examines both the attorney's relationship to the prior client and
24 the relationship between the prior and the present representation."
25 Cobra Solutions, 38 Cal. 4th at 847.

26 In order for a substantial relationship to exist, information
27 "material to the evaluation, prosecution, settlement or
28 accomplishment of the former representation given its factual and

1 legal issues" must also be material to the present representation.
2 Khani, 215 Cal. App. 4th at 921. General information about a
3 former client's practices, including the client's litigation
4 philosophy, that is not of critical importance does not warrant
5 disqualification. Id.; See also Farris, 119 Cal. App. 4th at 680
6 ("[F]or example, the attorney's acquisition during the first
7 representation of general information about the first client's
8 'overall structure and practices' would not of itself require
9 disqualification unless it were found to be 'material' -i.e.,
10 directly in issue of critical importance-in the second
11 representation.").

12 If a substantial relationship exists, the attorney is
13 disqualified from representing the second client. Cobra Solutions,
14 38 Cal. 4th at 847 (Citing Flatt, 9 Cal. 4th at 283); Speedee Oil,
15 20 Cal. 4th at 1146. Additionally, the attorney's law firm is also
16 presumed to have confidential information and is therefore
17 vicariously disqualified from representing the second client. Id.

18 **III. Discussion**

19 As Ms. Gebauer is no longer employed by the Law Offices of
20 John Burton (LOJB), the only question before the court is whether
21 LOJB should be disqualified from the case due to Ms. Gebauer's
22 prior work on the matter. In order to address this issue, the
23 court must determine whether dismissing Ms. Gebauer would have been
24 warranted had she continued her employment at the firm.

25 First, Defendants contend that, during her time at CCMS, Ms.
26 Gebauer represented the County in matters that involved factual
27 scenarios and legal issues similiar to those presented in the
28 instant case. (Motion at 9:4-6.) Defendants argue that Ms.

1 Gebauer's involvement in N.G. v. County gave her access to the
2 County's litigation strategy and budget in defending §1983 cases.
3 (Id. at 9:20-21.) Plaintiffs, however, contend that Ms. Gebauer
4 was never officially assigned to the case, and that her only role
5 in N.G. v. County was to summarize a few witness depositions, which
6 gave her no access to confidential information. (Opposition at
7 3:6-17).

8 The court agrees with Plaintiffs' contention that in her
9 capacity on the case, Ms. Gebauer would not have encountered the
10 type of confidential information that would disqualify her from
11 representing Plaintiffs in this matter. Because Ms. Gebauer was
12 never assigned to N.G. v. County, her relationship with the
13 Defendant County in that case was tangential. Nor does Ms.
14 Gebauer's experience conducting initial client interviews with LASD
15 deputies in another matter related to a different section 1983
16 lawsuit (Zulma Trana v. County of Los Angeles, Case No. BC534547
17 (Gutierrez Decl. ¶ 8)) constitute a "direct professional
18 relationship" with the County. Therefore, the court must assess
19 the relationship between the prior and present representations.
20 Khani, 215 Cal. App. 4th at 920.

21 While Ms. Gebauer might have been exposed to some general
22 information about the County's approach to section 1983 cases
23 during her employment at CCMS, such general strategy is not of
24 critical importance and does not warrant dismissal. Khani, 215
25 Cal. App. 4th at 921; Farris, 119 Cal. App. 4th at 680. Although
26 N.G. v. County, like this case, was a § 1983 claim, the first case
27 was dissimilar, insofar as it involved different named-defendant
28 deputies from a different LASD substation and, significantly,

1 involved the shooting of a decedent who was already in custody.
2 (Decl. Gebauer, ¶ 7.)

3 Apart from arguments regarding Ms. Gebauer's work on N.G. v.
4 County, Defendants contend that Ms. Gebauer's representation of the
5 County in civil service matters involving LASD deputies, exposed
6 her to confidential information relating to LASD training on the
7 use of force. (Mot. at 10:5-8; Gutteres Decl. ¶ 9). However,
8 these cases were brought against the County by LASD deputies for
9 disciplinary actions taken against them for their use of excessive
10 force. (Guterres Decl. ¶ 10.) As such, the legal issues,
11 strategies, and facts of those cases are not related to the present
12 case.

13 Given the loose relationship between the cases Ms. Gebauer
14 worked on and the present case, it does not appear that Ms.
15 Gebauer's employment prior to working at LOJB made her privy to
16 information material to the disposition or settlement of this case.
17 Therefore, no substantial relationship exists between this case and
18 previous ones.

19 The lack of a substantial relationship between this case and
20 previous ones would not warrant the disqualification of Ms.
21 Gebauer. Having determined that Ms. Gebauer would not be
22 disqualified from this case if she were still an employee with
23 LOJB, the court also finds that disqualification of the firm is
24 inappropriate.

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1 **IV. Conclusion**

2 For the reasons stated above, Defendants' Motion to Disqualify
3 is DENIED.

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5 IT IS SO ORDERED.

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8 Dated: September 29, 2016

A handwritten signature in blue ink, reading "Dean D. Pregerson". The signature is fluid and cursive, with the first name "Dean" and last name "Pregerson" clearly legible.

9 DEAN D. PREGERSON
10 United States District Judge
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